

# EXHIBIT "A"

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD COOK,

CERTIFIED COPY

Plaintiff,

vs.

CASE NO. C07 2569

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES,  
DON SLOAN, MARSHA ASHE, and  
DOES 1 - 50, inclusive,  
Defendants.

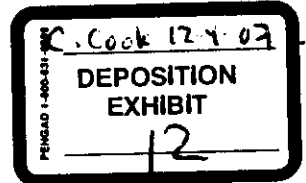
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DEPOSITION OF  
CLIFFORD COOK  
December 4, 2007

Reported by:	HANNAH KAUFMAN & ASSOCIATES, INC.
SUSAN IMPERIAL	Certified Shorthand Reporters
CSR #11219	472 Pacheco Street
	San Francisco, CA 94116
	(415) 664-4269

# **EXHIBIT "12"**

**WARRANT DECLINATION MEMORANDUM**



Reviewing DA: [Signature] Date of Review: 9-20-05

Suspect(s) CHRISTOPHER COOK

Police Report No.: 050835556

Agency: ☐ SFPD: ☒ DVRU ☐ General Works

☐ OTHER: \_\_\_\_\_

Inspector/Detail FLORES / DVRU

Possible Charge(s) 273.5 P.C. / 243(c)(1) P.C. / 502(c)(2)

Search Warrant Requested \_\_\_\_\_

**EXPLANATION OF DECLINATION**

The above listed warrant(s) was/were denied under REASON CODE 24L

**Facts and explanation:**

- ☐ no prior documented or undocumented DV between the parties
- ☐ defendant has no known criminal history
- ☐ details of report cannot be verified/victim cannot be located
- ☐ there is evidence of mutual physical violence
- ☐ lack of corroborating evidence:
  - ☐ no visible injuries
  - ☐ no medical treatment
  - ☐ no photos
  - ☐ no known independent witness(es)
- ☐ inconsistencies in statement(s) of ☐ victim or ☐ witness(es)
- ☐ credibility issues with victim
- ☒ Explanation/Other: \_\_\_\_\_

Victim not interested in pursuing this case.  
After repeated contacts the victim decided against  
going forward.

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1 under arrest, correct?

2 A. Yeah. I was under arrest. The moment they told  
3 me I was being arrested on an allegation, I was under  
4 arrest.

5 Q. And who actually did that? Was it Lieutenant  
6 Sloan or Captain Ashe?

7 A. Well, Captain Ashe I believe said, "You're under  
8 arrest." Well, Captain Ashe said that, "We're arresting  
9 you on an allegation." She said, "You're going to be  
10 placed under arrest for DV."

11 And I said, "You're arresting me on an  
12 allegation?"

13 Q. Did Deputy Chief Tabak ever come in?

14 A. Never.

15 Q. And so after Cashman came back in and said that  
16 they wouldn't let you give a statement, what happened?

17 A. We were arranging to make bail. Mike Lewis -- we  
18 started inquiring what bail would be -- the cost of bail.

19 Q. And inquiring of whom?

20 A. Inquiring -- well, from Ashe and Sloan. Because  
21 they were the arresting officers.

22 And they had Inspector Flores, who was the lead  
23 investigator on the case. And usually a bail schedule is  
24 set for such incidents pertaining towards each charge.  
25 And it was easy enough to know what the Ciardellages were,

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1 incident report were brought against you, correct?

2 A. Correct.

3 Q. And Flores was the inspector on your case,  
4 correct?

5 A. Correct.

6 Q. And do you know whether this is actually your  
7 police report number?

8 A. Well, I'd have to take a look and see.

9 (Witness reviews document.)

10 WITNESS: Yes, it is.

11 MS. BAUMGARTNER: Q. And you have no reason to  
12 believe that this wasn't you, even though the name is  
13 correct?

14 A. Well, it was in the case file. I guess it would  
15 be.

16 Q. Okay. And what is your understanding about the  
17 District Attorney's Office view of the case once they file  
18 this warrant declination memo or create this warrant  
19 declination memo?

20 A. That the case is closed.

21 Q. So after that, they're no longer doing any work  
22 on the case?

23 A. That's right.

24 Q. As far as you know, there was no other warrant  
25 declination memo in this case prior to September 20th,

1 2005, correct?

2 A. No.

3 Q. Do you know what the District Attorney's Office  
4 was doing on the case between July 27th and September  
5 20th?

6 A. Well, the DA -- which is very unusual -- the case  
7 went from the DV unit to the DA's -- District Attorney's  
8 investigative unit for them to investigate the case.  
9 Which has never happened before; where the DA is doing an  
10 investigation on a DV case. But anyway --

11 Q. How do you know that happened?

12 A. Because there's a chron in there. Erin Gallagher  
13 had the case. And it says in Flores's own chron that  
14 Flores concluded the case and passed all the information  
15 over to Erin Gallagher from DAI. The DAI did another two  
16 to three weeks of investigation, and then the warrant --  
17 then the case was presented to Giuntini, and the case --  
18 that's when the warrant declination was issued. So I  
19 don't know why DAI would have to review a case on a DV  
20 case that was a misdemeanor at the most.

21 Q. Were you aware that Lisa Cook was concerned about  
22 the police department investigating this matter?

23 A. I don't know.

24 Q. Did you read her statement in the chron?

25 A. Her statements aren't in there too much. I mean,

# **EXHIBIT "B"**



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES, DON  
SLOAN, MARSHA ASHE, and DOES  
1-50, inclusive,

Defendants.

No. C 07-02569 CRB

DEPOSITION OF CAPTAIN MARSHA ASHE

January 16, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755



**A. Maggi Saunders & Associates**  
Certified Shorthand Reporters

57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281

DEPOSITION OF CAPTAIN MARSHA ASHE

1 A. No, I haven't read anything about that.

2 Q. Okay. Now, you used the term "injuries":

3 And that could include anything from, I  
4 guess, a scratch, to, I guess, a broken bone, or even  
5 murder, I suppose, right?

6 A. Murder would be the ultimate injury --

7 Q. Okay. So --

8 A. -- but -- physical injury, yes.

9 Q. Okay. So, it could be anything from a  
10 scratch, to a severe beating, to broken bones, to  
11 death?

12 A. Yes.

13 Q. Okay. And in the last year, how many DV  
14 felony cases have you pursued, where the only injury  
15 was a scratch?

16 A. I wouldn't be able to -- I have no idea.  
17 We have over 400 cases that come in a  
18 month.

19 Q. Okay.

20 A. And out of those, I don't know which  
21 involved -- or what type of injuries.

22 Q. You keep statistics on how those  
23 400-cases-a-month are resolved, or disposed of?

24 A. Yes.

25 Q. Okay. On average, out of 400 cases a

DEPOSITION OF CAPTAIN MARSHA ASHE

1 month, how many result in felony arrests?

2 A. Those 400 cases are felony cases. We  
3 don't track misdemeanor cases in the Unit; and the 400  
4 is an average.

5 Q. Of Domestic Violence?

6 A. Yes.

7 Q. Felony cases?

8 A. Yes.

9 Q. Okay. A month.

10 A. Yes.

11 Q. All right.

12 And you don't know, of those -- of that  
13 400, you don't know how that relates to the number of  
14 complaints.

15 A. 400 complaints have been filed with us.  
16 Those are the 400 cases.

17 Q. I'm talking about the people who come to  
18 you and make a complaint, but you don't file, you don't  
19 arrest. Or, do you arrest every time somebody comes to  
20 you and says, "You know, my spouse injured me; I have a  
21 scratch": Every one of those cases, you make an  
22 arrest?

23 A. At the time of the incident, if there is  
24 injury, or complaint of pain, officers are mandated to  
25 make an arrest in the field, yes.

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1           That is one of those discretions that have  
2       been taken away from us in -- as law enforcement in  
3       Domestic Violence cases --

4           Q.     Okay.

5           A.     -- in fact, it's the only case I can think  
6       of in which an arrest is mandated.

7           Q.     So, if I went home tonight, got into an  
8       argument with my wife, and decided I wanted to get her  
9       arrested: I just call up the police, the police come,  
10      and say, "She hit me," and they'd have to arrest her.

11           MS. BAUMGARTNER: Objection. Vague and  
12      incomplete hypothetical.

13           MR. SCOTT: Q.   That's it. Those are the  
14      only facts:

15                   Police come. I tell the police, "She  
16      hit me".

17           A.     You would be asked if you were hurt.

18           Q.     I said, "Yeah, I'm hurt. It hurts."

19           A.     Technically, we would be mandated to make  
20      an arrest.

21           Q.     No discretion.

22           A.     Almost none.

23           Q.     That's good to know.

24                   Are you trying to make the public aware  
25      of this?

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1           A.       I don't do any public campaigns in that  
2 regard.

3           Q.       All right. And is this a policy -- Is  
4 this your policy?

5           A.       No, this is not my policy --

6                   MS. BAUMGARTNER: Objection: Vague. By  
7 "you," do you mean SFPD, or her personal policy?

8                   MR. SCOTT: Her. Her personal policy.

9           Q.       Is it the Department's policy?

10          A.       It is the Department's policy.

11          Q.       How long has it been the Department's  
12 policy that there is no discretion to make an arrest,  
13 it's mandatory: If a spouse says, "I got hit, and it  
14 hurts"?

15          A.       There -- I said that there is very little  
16 discretion, and we are technically mandated to make an  
17 arrest. It is Department policy, and I believe that it  
18 is State law to make an arrest.

19          Q.       Okay. All right. How long has it been  
20 Department policy?

21          A.       I don't know.

22          Q.       Okay. Is it written somewhere?

23          A.       Yes.

24          Q.       And where would it be written?

25          A.       It's in our General Orders.

DEPOSITION OF CAPTAIN MARSHA ASHE

1 Q. All right. And officers are trained that,  
2 if there is a call, and they go to a home, and a spouse  
3 says, "My spouse hit me, and it hurts," the arrest is  
4 mandated?

5 A. The arrest technically is mandated.

6 Those are -- It's difficult to talk  
7 about those situations in a vacuum. They generally  
8 are not -- they are not that manufactured.

9 Q. How do you know?

10 A. What?

11 Q. How do you know whether they are  
12 manufactured?

13 A. There is --

14 MS. BAUMGARTNER: Objection:  
15 Argumentative. Manufactured? What manufactured?

16 MR. SCOTT: She used the term. She said,  
17 "they are not manufactured". I asked her, "How does  
18 she know?"

19 MS. BAUMGARTNER: The scenario is not  
20 manufactured.

21 I think she is saying that -- you asked  
22 her a hypothetical question that eliminated all other  
23 facts, and that there is never such a situation that  
24 she addresses.

25 MR. SCOTT: Oh, I'm sure there is an

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1 infinite number of situations, and we could be here for  
2 years discussing all the possible variables, and we --  
3 I don't have time for that.

4 Q. I just gave you one simple hypothetical.

5 So, the officers don't have discretion, if  
6 a spouse says, "My spouse hit me, and it hurts":

7 That's an automatic felony arrest; is  
8 that right?

9 MS. BAUMGARTNER: Objection: Incomplete  
10 hypothetical; vague.

11 MR. SCOTT: Q. Is that correct?

12 A. Technically, officers have almost no  
13 discretion at the scene of a domestic violence, when  
14 there has been injury --

15 Q. Okay.

16 A. -- unless there is compelling evidence to  
17 the contrary --

18 Q. Okay.

19 A. -- and it has to be overwhelmingly --

20 Q. Okay. Now, you said "at the scene". What  
21 does that mean, "at the scene"?

22 A. Most arrests in domestic violence occur at  
23 the time, or very close to the time of the incident.

24 Q. Why is that?

25 A. Because of the mandated arrest policy.

## DEPOSITION OF CAPTAIN MARSHA ASHE

1           Officers are called to the scene of a  
2 domestic violence; there is evidence that supports the  
3 victim's statement when the arrest is made.

4           That is the majority of cases that we  
5 handle.

6           Q.     What if a spouse waits a week to complain,  
7 is it still mandated?

8           A.     It becomes more difficult to have the  
9 supporting evidence for the arrest; but the arrest  
10 itself is not mandated: You have an opportunity to  
11 review a case in a way that is different from being  
12 there at the scene.

13          Q.     How is it different?

14          A.     Well, for one thing, there has been a  
15 week's lag time. There is not the ongoing situation.  
16 It's calmed down. You may have lost evidence; you may  
17 have developed more evidence.

18                 There is -- It's a more complex situation.

19          Q.     A person could claim an injury that  
20 occurred two or three days after the so-called assault,  
21 right?

22          A.     Absolutely.

23          Q.     And a person may have -- things may have  
24 happened in a week that would give a person a motive to  
25 make a false allegation.



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1 know -- I don't believe that's the phrase she used, so  
2 I believe that's a vague question.

3 MR. SCOTT: Can you read back about two  
4 questions and answers ago? Was there an answer where  
5 the witness used the term "decline to prosecute".

6 (The record was read by  
7 the Reporter as requested.)

8 MS. BAUMGARTNER: I apologize. I did not  
9 hear the word "decline".

10 MR. SCOTT: Fair enough. It happens to me  
11 all the time.

12 Q. When you used the term, "decline to  
13 prosecute," what did you mean by that?

14 A. I meant the same thing I meant with  
15 "discharging a case". The standard for an arrest is  
16 different, and certainly much lower, than the standard  
17 of proof in a criminal court case.

18 And it's the District Attorney's Office,  
19 after the arrest is made, who has the responsibility  
20 to review cases for the likelihood of a conviction.

21 Q. Are you aware of any cases where a  
22 District Attorney reviewed a case before an arrest was  
23 made?

24 A. In an arrest warrant case, that obviously  
25 happens. That information is presented to the District

1 Attorney.

2 We oftentimes review cases with the  
3 District Attorney before an arrest is made, for a  
4 variety of reasons: Not for approval, but just to  
5 see what additional charges may exist; what we may be  
6 missing; and if we have an opportunity prior to an  
7 arrest for investigative steps, we bring the District  
8 Attorney in, as a matter of course, on many, many  
9 cases.

10 Q. So it's not unusual to have the District  
11 Attorney's Office review a Domestic Violence case  
12 before an arrest is made.

13 A. Actually, it is unusual.

14 Q. Okay.

15 A. It's not unusual to discuss a case with  
16 the District Attorney before the arrest, but most of  
17 our cases come to us already with an arrest made.

18 Q. Okay. But in the cases where an arrest  
19 hasn't been made, is it unusual to discuss the case  
20 with the District Attorney before an arrest is made?

21 A. No.

22 Q. All right.

23 A. Once the case is being investigated.

24 Q. And would it be unusual to arrest someone  
25 after the District Attorney has told you that she is

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1 not going to prosecute the case?

2 A. It would be unusual, yes.

3 Q. How many times has that occurred since  
4 you've been assigned to the Domestic Violence Unit?

5 A. I have never been told by a District  
6 Attorney that they weren't going to prosecute a case  
7 prior to an arrest.

8 Q. Okay. You mean, directly.

9 A. Or indirectly.

10 Q. Oh. And if you were aware of that, would  
11 you make an arrest?

12 A. Possibly --

13 MS. BAUMGARTNER: Objection. Calls for  
14 speculation.

15 MR. SCOTT: Q. Go ahead.

16 A. Possibly.

17 Q. Why?

18 A. The District Attorney doesn't approve our  
19 arrests. The level of --

20 The requirement to make an arrest is  
21 very different from the requirements necessary to  
22 proceed with a criminal case.

23 And based on the totality of circumstances  
24 in a case, it would be unusual, and it would -- it  
25 would absolutely be unusual.

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1 Q. Just "Statistics".

2 A. Yes.

3 Q. And do you submit these reports up your  
4 chain-of-commands?

5 A. Yes.

6 Q. And who do you submit these reports to?

7 A. They go to my Deputy Chief.

8 Q. And who is that?

9 A. It was Morris Tabak, T-a-b-a-k.

10 Q. And who is it now?

11 A. Deputy Chief David Shinn, S-h-i-n-n.

12 Q. And if I understand you correctly, these  
13 monthly reports that you referred to as "Statistics"  
14 would include information such as the number of  
15 Domestic Violence cases you present a month to the  
16 District Attorney's Office?

17 A. (Nodding head.)

18 Q. And the number of those which are  
19 prosecuted and the number which are not?

20 A. Yes.

21 Q. And you believe, on average, it's at least  
22 50 percent of those cases are not prosecuted.

23 A. Yes.

24 Q. Okay. And how many of those that are not  
25 prosecuted are -- involve an arrest?

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1 A. All of them.

2 Q. Okay. All of them?

3 A. Yes.

4 Q. And those arrests are at the scene?

5 A. Most of those.

6 Most of the cases we get in are because  
7 an arrest has been made at the scene. So, it would  
8 follow that most of the cases we present, then, to  
9 the District Attorney, just as a matter of course,  
10 are cases in which an arrest has been made.

11 But a hundred percent of our rebooking  
12 packages are based on an arrest that was made prior,  
13 either at the scene, or the Inspectors made the  
14 Probable Cause arrest. That's the nature of  
15 rebooking, is that there is an arrest that is made.

16 So, either at the scene, by the responding  
17 officers; or afterwards, based on Probable Cause by the  
18 Inspector.

19 Q. Okay. And do DAs ever review cases before  
20 an arrest is made, if not made at the scene?

21 A. Yes.

22 Q. Okay. And what happens in the situations  
23 if the DA reviews the case before an arrest is made,  
24 and the DA informs your office that she is not going to  
25 prosecute?

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1 investigative criteria. If an officer is involved, the  
2 case will be investigated.

3 Q. Well, aren't all allegations of Domestic  
4 Violence investigated?

5 A. No. A burden, in a sense, is placed on a  
6 victim in a non-arrest case to come forward.

7 This case was investigated, without the  
8 victim coming forward. We were more proactive with it.

9 Q. Why?

10 A. Because of the Officer-involved  
11 allegation.

12 Q. Okay. So, if my client had not been a  
13 Police Officer, you would have treated this  
14 differently.

15 A. Yes.

16 Q. Okay.

17 What if my client had been a woman --

18 MS. BAUMGARTNER: Objection. Calls for  
19 speculation.

20 MR. SCOTT: Q. -- would you have treated  
21 it differently, and everything else was the same: He  
22 was married to another woman?

23 MS. BAUMGARTNER: Objection. Calls for  
24 speculation.

25 MR. SCOTT: Q. Go ahead.

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1 Q. Was that the primary issue that was being  
2 discussed?

3 A. No. The primary issue was not his  
4 suicidal -- or the allegation that he was suicidal.

5 Q. The primary issue was whether to arrest or  
6 not?

7 A. Yes.

8 Q. Was a decision made at that meeting?

9 A. Yes.

10 Q. Who made the decision?

11 A. It was made in-concert with the Deputy  
12 Chief and myself and Lieutenant Sloan.

13 Q. So Lieutenant Sloan, you and Deputy Chief  
14 Tabak made the decision to arrest at that meeting.

15 A. Yes.

16 Q. Was that meeting over by 10:00 o'clock?

17 A. I don't remember how long it lasted, or  
18 that it started at 9:30, the time line there, I don't  
19 know. I don't remember.

20 Q. Okay. And why did you wait until later in  
21 the afternoon to arrest him?

22 A. He was gone and out of the building when  
23 we asked where he was.

24 Q. Who told you that?

25 A. His Lieutenant.

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1 Q. Okay. And were you aware that about  
2 10:00 o'clock that morning Inspector Flores met with  
3 Assistant District Attorney Aguilar-Tarchi?

4 A. No.

5 MS. BAUMGARTNER: Objection. Vague as to  
6 time.

7 MR. SCOTT: Q. At any time. Have you  
8 ever become aware of that?

9 A. I knew that they were meeting with her. I  
10 wasn't sure what time or when, or if they had met prior  
11 with her.

12 Q. And what did you understand to be the  
13 purpose of that meeting?

14 A. Going to review the facts of the case for  
15 a possible warrant.

16 Q. And who told you that?

17 A. It was -- We discussed it. It was what we  
18 had discussed.

19 Q. Okay. So was the decision to arrest going  
20 to be based on whether she would issue a warrant?

21 A. No.

22 Q. So you were going to make the arrest,  
23 whether or not a warrant would issue?

24 A. Yes.

25 Q. Okay. And whether or not the District



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1 the purpose of Inspector Flores updating the DA's  
2 Office?

3 MS. BAUMGARTNER: Objection. It's been  
4 asked and answered.

5 THE WITNESS: I remember a discussion  
6 regarding a warrant, but I don't -- I don't know what  
7 he meant exactly by saying, you know, "told to update  
8 the DA's Office on the incident".

9 MR. SCOTT: Q. And did you understand  
10 that at approximately 10:00 o'clock that morning,  
11 Inspector Cirradelli and Inspector Flores met with  
12 Assistant District Attorney Aguilar-Tarchi?

13 A. I didn't know that they were meeting with  
14 her that morning.

15 Q. Okay. You knew they were meeting with  
16 someone in the DA's Office, you didn't know if it was  
17 her?

18 A. I didn't know when they were meeting. I  
19 knew they would be meeting with her --

20 Q. All right.

21 A. -- I didn't know when.

22 Q. And it says here in this Chrono:

23 "While conducting meeting, Lieutenant  
24 Sloan came in and informed us that the  
25 suspect would be taken into custody."

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1 Do you see that?

2 A. Yes.

3 Q. Do you have any reason to believe that did  
4 not happen?

5 A. No.

6 Q. Okay. Do you believe Inspector Flores  
7 already knew about that when he went to the meeting?

8 A. I don't, you know, again, remember if  
9 Inspector Flores was still in the room when we had  
10 discussed making the arrest.

11 Q. All right. And when did you find out that  
12 Miss Aguilar-Tarchi had decided not to prosecute the  
13 case on the morning of July 27th?

14 MS. BAUMGARTNER: Objection. Calls for  
15 speculation. Lacks foundation.

16 MR. SCOTT: Q. Go ahead.

17 A. I didn't know on the morning of July 27th,  
18 that she was not going to prosecute the case.

19 Q. Did you find out later that she had told  
20 Inspector Flores and Inspector Cirradelli on the  
21 morning of the 27th, that she was not going to charge  
22 the case?

23 A. No.

24 Q. You never found that out?

25 A. No.

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1 A. Because that's something worth knowing.

2 Q. Why?

3 A. Because I would want to ask her, "Why:  
4 What problems do you see with this case? And what, if  
5 any of those concerns, can we address before we make  
6 the arrest?"

7 Q. Okay. And if you had been told on the  
8 morning of July 27th, 2005, that the District  
9 Attorney's Office was not going to prosecute, would you  
10 have gone ahead with the arrest anyway in the  
11 afternoon?

12 MS. BAUMGARTNER: Objection. Incomplete  
13 hypothetical. Calls for speculation.

14 MR. SCOTT: Q. Go ahead.

15 A. Yes, I would have.

16 Q. Why?

17 A. Because this case was predicated on  
18 physical evidence, escalating violence, as reported by  
19 the victim, and lethality factors, that suggested this  
20 could easily be a domestic violence homicide.

21 And I felt that we had a legal and ethical  
22 responsibility to make an arrest in this case.

23 Q. And is that why you wanted enhanced bail?

24 A. Yes.

25 Q. Did you think enhancing the bail from

DEPOSITION OF CAPTAIN MARSHA ASHE

1 in Inspector Flores' chronological report.

2 Q. What about Lieutenant Sloan, should he  
3 have had a chronological report?

4 A. No.

5 Q. Why not?

6 A. His -- He was not the investigator on this  
7 case. He was -- His information appears to have been  
8 included in the chron.

9 Q. Since you've been in the DV Unit, how many  
10 people have you arrested for domestic violence?

11 A. Well, there have been, I want to say --  
12 You are talking Police Officers.

13 Q. No. Anybody, where you are the arresting  
14 officer.

15 A. Only one.

16 Q. Mr. Cook.

17 A. Yes.

18 Q. So, in 400 arrests a month, since 2000,  
19 what?

20 A. '4.

21 Q. You've been there since 2004.

22 A. Mm-hmm.

23 Q. So, thousands of arrests, and the only one  
24 you made was Mr. Cook.

25 A. Yes.

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1 Q. Oh. Any reason why you made the arrest,  
2 instead of the Inspector handing the case, Mr. Flores?

3 A. Yes.

4 Q. And why is that?

5 A. Because, as the Commanding Officer of the  
6 Unit, and in prior assignments, whenever there was a  
7 disarming, or an arrest of an officer, I felt it was my  
8 responsibility to do that personally.

9 It is very difficult to do, and it is  
10 something that nobody looks forward to doing, and as  
11 Commanding Officer, I feel that it's clearly my role.

12 Q. Well, when was Mr. Cook disarmed?

13 A. He was disarmed administratively, I would  
14 believe, earlier in the week. I didn't have any -- I  
15 have no knowledge of that, other than reviewing the  
16 chron.

17 Q. So the issue of his being disarmed wasn't  
18 part of your concern over the arrest, correct?

19 A. In what sense?

20 Q. Well, that wasn't an issue, in terms of  
21 having to disarm him at the time he was arrested.

22 A. I don't remember that we talked about when  
23 he was disarmed. I'm not sure of your question, I'm  
24 sorry.

25 Q. Well, I thought I understood you to say

DEPOSITION OF CAPTAIN MARSHA ASHE

1 Q. Did Captain Cashman tell you he did not  
2 want to make the arrest?

3 A. No.

4 Q. Was that an option?

5 MS. BAUMGARTNER: Objection. Calls for  
6 speculation.

7 MR. SCOTT: Q. Go ahead.

8 A. He -- You know, working with Captain  
9 Cashman could be quite vocal about certain things.

10 His role in this was administrative, and  
11 if he had any opinion as to the arrest, I had never  
12 heard it; he never voiced it.

13 Q. Okay.

14 A. And no one -- You know, to clarify  
15 something: Nobody wanted to make this arrest. This is  
16 never -- This is never a good thing.

17 Q. Why was -- To your knowledge, who made the  
18 decision to arrest before a warrant was obtained?

19 A. I ultimately made that decision, in  
20 discussion with Deputy Chief Tabak and Captain Keohane.

21 Q. Well, was it their decision or your  
22 decision?

23 A. It was my decision, supported by them.

24 Q. What does that mean, "supported by them"?

25 A. Well, I certainly am not going to make an

DEPOSITION OF CAPTAIN MARSHA ASHE

1     although. . .

2             Q.     So, between --

3             A.     -- separating out the administrative  
4     issues, versus the criminal issues, the highest-ranking  
5     person there of an investigative nature was Deputy  
6     Chief Tabak.

7             Q.     So he was the final decision-maker.

8             A.     In the investigative sense, yes, but he  
9     wasn't -- I didn't go to him and ask permission.

10            I went to him to discuss the factors of  
11     this case, to see if there were concerns that we  
12     hadn't addressed and, in a sense, to involve him in  
13     the decision to make the arrest.

14            Q.     So, you essentially told him you planned  
15     on making the arrest without a warrant --

16            A.     I supported the arrest, yes.

17            Q.     Well, did you tell him you were going to  
18     make an arrest without a warrant, and just as a  
19     courtesy, told him, or were you asking for his  
20     permission?

21            A.     I was asking for his advice.

22            Q.     And what was his advice?

23            A.     He reviewed the lethality factors, and he  
24     supported the idea of making the arrest outside of a  
25     warrant.